

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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VINCENT MACALUSO, JR.,

Petitioner,

-against-

WILLIAM F. KEYSER & THE ATTORNEY
GENERAL OF THE STATE OF NEW YORK,

Respondents.

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ROSLYNN R. MAUSKOPF, Chief United States District Judge:

Petitioner Vincent Macaluso is a state prisoner, incarcerated at the Sullivan Correctional Facility. Pending before this Court is a *pro se* Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. On April 7, 2020, Macaluso filed an “emergency petition for a writ of extraordinary circumstance for relief.” (Doc. No. 33.) Petitioner requests this court for an order releasing him from state prison due to the COVID-19 pandemic, in light of a number of medical conditions that he asserts places him at higher risk for contracting the virus. Macaluso also reiterates some of the claims in his pending § 2254, that he was denied the right to an impartial jury and his claim of actual innocence. (*Id.*) For the reasons set forth below, Macaluso’s petition for emergency relief is denied.

This Court construes Macaluso’s emergency application as a request for release or bail pending a decision in his underlying habeas petition as federal habeas relief is only available for challenges to the duration or legality of a prisoner’s confinement. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). While federal courts have the authority to grant bail to habeas petitioners, that “power is a limited one, to be exercised in special cases only.” *Mapp v. Reno*, 241 F.3d 221, 226 (2d. Cir. 2001). A habeas petitioner’s bail request “must demonstrate that ‘the habeas

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petition raise[s] substantial claims and that extraordinary circumstances exist[] that make the grant of bail necessary to make the habeas remedy effective.” *Grune v. Coughlin*, 913 F.2d 41, 44 (2d Cir. 1990) (quoting *Iuteri v. Nardoza*, 662 F.2d 159, 161 (2d Cir. 1981)). “[C]ourts in this district have reasoned that ‘there must be a demonstrated likelihood that the petition will prevail, based upon claims of a substantial nature upon which the petitioner has a high probability of success, and demonstrating merits that are more than slightly in petitioner’s favor, so that victory for petitioner can be predicted with confidence.’” *Muja v. United States*, No. 10-CV-2770 (NGG), 2011 WL 1870290, at *1 (E.D.N.Y. May 16, 2011) (quoting *Beras v. United States*, No. 05-CV-2678 (SWK), 2007 U.S. Dist. LEXIS 5273, at *3, 2007 WL 195352 (S.D.N.Y. Jan. 24, 2007)).

Macaluso fails to meet this standard. The court cannot say that Macaluso’s habeas petition raises substantial claims with a high probability of success. *See Peterson v. Diaz*, No. 19-CV-01480, 2020 WL 1640008 (E.D. Cal. Apr. 2, 2020). As such, this is not one of those extraordinary cases that counsels in favor of granting bail to a habeas petitioner. *Cf. Clark v. Hoffner*, No. 16-11959, 2020 WL 1703870, at *1 (E.D. Mich. Apr. 8, 2020) (granting emergency COVID-19 to state habeas petitioner where court had already granted conditional writ of habeas corpus but had yet to conduct an evidentiary hearing and prosecutor averred to recommend granting the petition).

Moreover, New York prison and state officials are in the best position to evaluate which prisoners sentenced in the state may be best subject to release under state laws and protocols. *See, e.g.*, Department of Corrections and Community Supervision COVID-19 Report, New Protocols, Releases, *available at* doccs.ny.gov/doccs-covid-19-report; *see also* New York City Board of

Correction letter calling for the release of certain inmates, *available at*

<https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Letter-from-BOC-re-NYC-Jails-and-COVID-19-2020-03-21.pdf>. The court recognizes the seriousness of the national pandemic,

particularly to inmates who present with a higher risk for contracting the virus. Macaluso may be one of those individuals. However, the state prison system is in the best position to evaluate Macaluso's medical condition and his risk of contracting the virus, and determine whether release pursuant to available state prison laws or protocols is warranted.

CONCLUSION

For these reasons, Macaluso's emergency petition for release pending a decision in his § 2254 habeas petition is denied. The Clerk of Court is respectfully directed to mail a copy of this Order to Macaluso and to note that mailing on the docket sheet.

SO ORDERED.

Dated: Brooklyn, New York
April 17, 2020

Roslynn R. Mauskopf

ROSLYNN R. MAUSKOPF
Chief United States District Judge